



Florida Department of Transportation

**RICK SCOTT
GOVERNOR**

605 Suwannee Street
Tallahassee, FL 32399-0450

**MIKE DEW
SECRETARY**

The Honorable Pam Bondi
Attorney General
C/O Legal Opinions
Department of Legal Affairs
The Capitol PL01
Tallahassee, Florida 32399-1050

RE: Request for Legal Opinion

The Florida Department of Transportation (Department) recognizes the importance of transparency and expeditiously providing the public with requested records. At this time, the Department is working with the National Transportation Safety Board (NTSB) to review the fatal collapse of a pedestrian bridge that was being constructed in Miami under contracts procured by Florida International University. Significant funding for the bridge project was obtained through a federal grant that was passed through to the University by the Department under its Local Agency Program. The Department is working hand-in-hand with NTSB in the investigation, as contemplated by the NTSB Accident/Incident Investigation Procedures (49 Code of Federal Regulations Part 831) and is committed to preserving the integrity of NTSB's federal investigation. The Department hopes and expects that the investigation will ultimately provide sufficient information and recommendations to ensure a similar tragedy does not occur in the future.

The Department has received a number of requests for records in its possession relating to the bridge project. The Department is committed to transparency and fully understands the importance of complying with applicable provisions of Florida law, including the provisions of Chapter 119 Florida Statutes, applicable to governmental contracts. The Department continuously strives to operate as transparently as possible and would like to ensure that its handling of pending public records requests comports with all applicable law.

At this time, NTSB has determined that some of the requested records are subject to the restrictions of 49 Code of Federal Regulations part 831 and cannot be released without approval

of the NTSB investigator in charge. That approval has not been provided by the NTSB. The Department has been advised that at least one requestor contends that the Department is required under applicable state law to release responsive records now, without regard to the NTSB or their investigation.

In researching this issue, the Department reviewed Florida Attorney General Opinion 2005-03 which states "If a federal statute requires particular records to be closed and the state is clearly subject to the provisions of the statute, then pursuant to the Supremacy Clause of the United States Constitution, [1] the state must keep the records confidential. [2]"

In this case, applicable federal law does not make records confidential, but instead provides that the records cannot be released while the federal investigation is ongoing without the approval of NTSB. Under this scenario, responsive records will become available and will be provided to the public when the NTSB has concluded its investigation or determines that release of records will not impede its investigation. The question appears to be whether the Department should fulfill the records request or delay in adherence to the instruction from the federal government. This appears to be a question that has not been clearly addressed by Florida courts. The Department respectfully requests an attorney general opinion on the single legal question of whether the provisions of Chapter 119, Florida Statutes, require the Department to release requested records relating to the March 15, 2018 fatal bridge collapse in spite of the provisions of federal law and the NTSB determination that release should not yet occur?

Sincerely,



Denise Johnson
Deputy General Counsel

[1] Article VI, U.S. Const.

[2] See, e.g., *State ex rel. Cummer v. Pace*, 159 So. 679 (Fla. 1935); Ops. Att'y Gen. Fla. 03-26 (2003), 90-102 (1990), 85-03 (1985), and 82-63 (1982). Cf. *Florida Sugar Cane League, Inc. v. Florida Department of Environmental Regulation*, No. 91-2108 (Fla. 2d Cir. Ct., September 20, 1991), *per curiam affirmed*, 606 So. 2d 1267 (Fla. 1st DCA 1992) (where federal law did not clearly require that documents received by a state agency in the course of settlement negotiations to resolve a federal lawsuit be kept confidential, such documents were open to inspection under Ch. 119, Fla. Stat.).